



The Trusts & Estates Section Presents:

CAC Training: The Fundamentals

Saturday, September 24, 2022

9:00 A.M. - 12:30 P.M.

Zoom Webinar

CLE Credit: 2.5 Hours (Trust and Estates Specialization)
1.0 Hours (Ethics)

Provider #36

The Los Angeles County Bar Association is a State Bar of California approved MCLE provider. The Los Angeles County Bar Association certifies that this activity has been approved for MCLE credit by the State Bar of California.



AGENDA

9:00 - 9:05: Intro and Such

9:05 - 10:15: **Nuts & Bolts**

David Price Esq. - Pray, Price, Williams & Picking

Beti Bergman, Esq. - Peninsula Law

Megan Waugh, Esq. - Waugh Law

10:15 - 10:45: **CAC Reports**

Timothy Mishler, Esq. - Law Office of Timothy G. Mishler

Hon. Lee Bogdanoff - Los Angeles Superior Court

10:45 -11:45: **Ethical Guidelines for Los Angeles County Probate Court Appointed Counsel (CAC): Or, What Am I Supposed To Do Now That I Am Someone's CAC?**

Lawrence M. Lebowsky, Esq. - Law Office of Lawrence M. Lebowsky

Adam Streltzer, Esq.

11:45 - 12:25: **Tips & Tricks for Court Appointed Counsel**

Brittany Duke, Esq. - Barbaro, Chinen, Pitzer and Duke, LLP

12:25 - 12:30: Conclusion and Upcoming Dates



About the Presenters



CAC TRAINING: THE FUNDAMENTALS

September 24, 2022

ABOUT THE PRESENTERS

David Price, Esq.: has been practicing Probate since 1985. He is a partner at Pray, Price, Williams & Picking. Mr. Price graduated from U.C. Davis - Martin Luther King, Jr. School of Law and majored in political science at Brigham Young University. Mr Price speaks German. Mr. Price is a long serving member of the Court Appointed Counsel Program.

Beti Tsai Bergman, Esq.: is the founder and principal shareholder of the law firm, Peninsula Law, which specializes in probate, trusts, estates, conservatorships, and financial elder abuse. Ms. Bergman Ms. Bergman is certified by the California Board of Legal Specialization in estate planning, trust and probate law and has extensive experience in representing conservators, conservatees, trustees, executors, heirs and beneficiaries in uncontested and contested trust and estate matters. Before specializing in probate, Ms. Bergman was a Deputy City Attorney for City of Los Angeles and was a business litigator in private practice. She is a frequent public speaker, has received numerous awards and honors and has a strong commitment to giving back to the community and providing public service, and thereby serves on numerous bar boards and committees. Ms. Bergman has completed the Mediating the Litigated Case program at Pepperdine Caruso School of Law, received her J.D. from UC Davis School of Law, earned a B.S. from UCLA in Applied Mathematics, an M.S. from Long Beach State in Applied Mathematics where she graduated with distinction. In addition to practicing law, she volunteers as a mediator and settlement officer for the Los Angeles Superior Court and CourtCall ODR.

Megan Waugh, Esq.: is the owner of Waugh Law, and specializes in trust, estates, conservatorship, and elder law. Ms. Waugh has been named as a Southern California Super Lawyers Rising Star in Estate and Trust Litigation every year since 2016. Ms. Waugh has served on the CAC panel since 2017. She received her bachelor's degree from the University of Illinois, Urbana- Champaign where she graduated with honors. She received her Juris Doctorate from Pepperdine School of Law where she graduated cum laude.

Judge Lee Bogdanoff: was appointed by Governor Newsom in August 2020 and has served in the Los Angeles Superior Court Probate division since October 1, 2020. A graduate of University of California Berkeley School of Law, Judge Bogdanoff was a shareholder at Stusman Treister & Glatt for 12 years and a managing partner and of counsel for Klee, Tuchin, Bogdanoff & Stern LLP for more than 20 years. Judge Bogdanoff specialized in insolvency and reorganization while in private practice. After winding down his practice in 2017, Judge Bogdanoff volunteered with the Legal Aid Foundation of Los Angeles before becoming a judicial officer.

Timothy Misher, Esq.: has recently embarked on a solo practice limited exclusively to estate planning, trust and probate law. He was formerly a member of the law firm of Holland, Donnelly & Mishler for thirty years where he also focused on estate planning, trust and probate law. He is a Certified Specialist in Estate Planning, Trust and Probate Law, by the State Bar of California, Board of Legal Specialization. A former Certified Public Accountant, he attended night school at Glendale University College of Law while pursuing that career. He received his J.D. degree and was admitted to the bar in 1991 and joined the law firm of Holland, Donnelly & Mishler in 1992. He is now a solo practitioner with his office in Monrovia, California.

Lawrence Lebowsky, Esq.: is certified by the State Bar of California Board of Legal Specialization in Estate Planning, Trust and Probate Law, and served on its Estate Planning, Probate and Trust Law Advisory Commission. His practice includes litigation and administration of Trust, Estate, Conservatorship and Elder Law matters, taxation, estate planning and tax-exempt organizations. A graduate of UCLA, Southwestern Law School and Boston University School of Law (LL.M., Tax), he serves on the Executive Committee of the LACBA Trusts and Estate Section, the Los Angeles Superior Court's Court Appointed Counsel panel as CAC and Guardian ad litem, and on the Bet Tzedek Trusts and Estates Pro Bono panel.

Adam L. Streltzer, Esq.: is a probate, trust, and fiduciary litigator in Los Angeles and Culver City. He received his undergraduate degree from San Diego State University and his law degree from the University of the Pacific, McGeorge School of Law. Adam is a member of the Trust and Estates Section of the Los Angeles County Bar Association and a member and executive officer of the Commercial Law League of America. He is an active volunteer and participant in the appointed counsel (CAC) and guardian ad litem (GAL) programs of the Los Angeles County Superior Court. Adam practice generally focuses on litigation concerning the rights, duties, responsibilities, money, and property of the deceased, incompetent, spendthrift, and bankrupt, with a special emphasis in representing creditors in the probate court.

Brittany Duke, Esq.: joined Barbaro, Chinen, Pitzer & Duke, LLP in 2012 as an associate and in 2020 became a partner. Ms. Duke's practice focuses exclusively on matters handled by the probate courts including trust and estate litigation, elder abuse, probate, trust administration, limited conservatorships, general conservatorships and guardianship proceedings. Ms. Duke represents private professional fiduciaries in all probate court proceedings and is also regularly appointed by the Los Angeles Superior Court to represent proposed conservatees.



Ethical Guidelines for Los Angeles County Probate Court Appointed Counsel (CAC):

Or, What Am I Supposed To Do Now That I Am Someone's CAC?



Ethical Guidelines for Los Angeles County Probate Court Appointed Counsel (CAC):

Or, What Am I Supposed To Do Now That I Am Someone's CAC?

by

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LAW OFFICE OF
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Congratulations.

You, a seasoned attorney with the required level of work experience in the various fields of law covered by the protective proceeding division of the Probate Code (Division 4, including conservatorship, guardianship, etc.), have been appointed as an attorney for a proposed Conservatee, Conservatee, or person alleged to lack legal capacity.

You are an attorney, representing a client, in a pending court proceeding under the Probate Code. ***But how do you go about doing your job as “Court Appointed Counsel,” or “CAC,” to represent your client in the subject court proceeding?***

To understand the nature of your role as CAC, we must first understand how and why you were appointed, and, second, review and apply the procedural and ethical guidelines that are applicable to your appointment.

1. Procedural Guidelines - Appointment as Counsel

- a. The appointment of legal counsel (CAC) under the Probate Code may arise on a mandatory or discretionary basis.
- b. DISCRETIONARY – Prob. Code §1470** - Appointment pursuant to Prob. Code §1470(a) arises when a ward, proposed Conservatee, or conservatee is not otherwise represented by an attorney, and either that the appointment would be helpful to resolution of matter or is necessary to protect the person's interests.
 - i. Appointment is discretionary, not required.
 - 1. "The court **may** appoint..."
 - ii. Applicable to any proceeding under the protective proceeding division of the Probate Code (which is Division 4, including conservatorship, guardianship, etc.).

Prob. Code §1470.

- (a) The court may appoint private legal counsel for a ward, a proposed ward, a conservatee, or a proposed conservatee in any proceeding under this division if the court determines the person is not otherwise represented by legal counsel and that the appointment would be helpful to the resolution of the matter or is necessary to protect the person's interests.
- (b) If a person is furnished legal counsel under this section, the court shall, upon conclusion of the matter, fix a reasonable sum for compensation and expenses of counsel. The sum may, in the discretion of the court, include compensation for services rendered, and expenses incurred, before the date of the order appointing counsel.
- (c) The court shall order the sum fixed under subdivision (b) to be paid:
 - (1) If the person for whom legal counsel is appointed is an adult, from the estate of that person.
 - (2) If the person for whom legal counsel is appointed is a minor, by a parent or the parents of the minor or from the minor's estate, or any combination thereof, in any proportions the court deems just.
 - (3) If a ward or proposed ward is furnished legal counsel for a guardianship proceeding, upon its own motion or that of a party, the court shall determine whether a parent or parents of the ward or proposed ward or the estate of the ward or proposed ward is financially unable to pay all or a portion of the cost of counsel appointed pursuant to this section. Any portion of the cost of that counsel that the court finds the parent or parents or the estate of the ward or proposed ward is unable to pay shall be paid by the county. The Judicial Council shall adopt guidelines to assist in determining financial eligibility for county payment of counsel appointed by the court pursuant to this chapter.
- (d) The court may make an order under subdivision (c) requiring payment by a parent or parents of the minor only after the parent or parents, as the case may be, have been given notice and the opportunity to be heard on whether the order would be just under the circumstances of the particular case.

c. MANDATORY – Prob. Code §1471

- i. **Prob. Code §1471(a)** – The Court “shall” appoint counsel for the person in certain enumerated protective proceedings.

Prob. Code §1471(a)

If a conservatee, proposed conservatee, or person alleged to lack legal capacity is unable to retain legal counsel and requests the appointment of counsel to assist in the particular matter, whether or not that person lacks or appears to lack legal capacity, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the person in the following proceedings under this division:

- (1) A proceeding to establish or transfer a conservatorship or to appoint a proposed conservator.
- (2) A proceeding to terminate the conservatorship.
- (3) A proceeding to remove the conservator.
- (4) A proceeding for a court order affecting the legal capacity of the conservatee.
- (5) A proceeding to obtain an order authorizing removal of a temporary conservatee from the temporary conservatee's place of residence.

- ii. In contrast to Prob. Code §1470 discretionary appointment, appointment is required by §1471(a) in proceedings:
1. To establish, transfer, or terminate a conservatorship;
 2. To remove a conservator;
 3. Affecting legal capacity; or
 4. To remove a temporary conservatee from their residence.
- iii. Appointment is required when the person is unable to retain legal counsel and requests it.
- iv. Appointment is also required whether or not the person lacks or appears to lack capacity.

PRACTICE TIP: The Probate Investigator is directed to inquire and determine if a Conservatee or proposed Conservatee is represented by legal counsel, if legal counsel is desired, and/or if appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect their interests, and to report to the Court regarding these matters. See, for example, Prob. Code §§1826(a)(7)-(9) and 1851.1(b)(9)-(12).

- v. Pertains to “proposed Conservatee, conservatee, or person alleged to lack legal capacity.”
1. Who are “persons alleged to lack legal capacity?” See Prob. Code §§3000 et seq. and 3200 et seq.

- vi. **Prob. Code §1471(b)** – If a proposed conservatee or conservatee has not and does not plan to retain counsel, then the Court shall appoint legal counsel.
 - 1. Again, mandatory not discretionary, and appointment shall be made whether or not the person lacks or appears to lack capacity.

Prob. Code §1471(b)

If a conservatee or proposed conservatee has not retained legal counsel and does not plan to retain legal counsel, whether or not that person lacks or appears to lack legal capacity, the court shall, at or before the time of the hearing, appoint the public defender or private counsel to represent the person in any proceeding listed in subdivision (a).

- 2. Applies only for conservatees and proposed conservatees.
 - a. This excludes the category of “persons alleged to lack capacity.”
- vii. **Prob. Code §1471(c)** – FOR LIMITED CONSERVATORSHIPS ONLY.
 - a. Similar to Prob. Code §1471(a):
 - i. This is mandatory and not discretionary.
 - ii. Applies when the person is unable to retain legal counsel and requests it.
 - iii. Applies whether or not the person lacks or appears to lack capacity.

Prob. Code §1471(c)

In any proceeding to establish a limited conservatorship, if the proposed limited conservatee has not retained legal counsel and does not plan to retain legal counsel, the court shall immediately appoint the public defender or private counsel to represent the proposed limited conservatee. The proposed limited conservatee shall pay the cost for that legal service if they are able. This subdivision applies irrespective of any medical or psychological inability to attend the hearing on the part of the proposed limited conservatee as allowed in Section 1825.

PRACTICE TIP: Again, the Probate Investigator is directed to inquire and determine when the person is unable to retain legal counsel and requests it, and to report to the Court regarding those matters. See, for example, Prob. Code §§1826(a)(7)-(9) and 1851.1(b)(9)-(12).

viii. **Prob. Code §1471(d)** – Preferred attorneys (i.e., NON-COURT APPOINTED COUNSEL)

- b. If a proposed conservatee, conservatee, or person alleged to lack legal capacity, expresses a preference, court shall **allow representation (not appoint)** by the preferred attorney, and the attorney shall provide zealous representation per Prob. Code §1471(e).

Prob. Code §1471(d)

If a conservatee, proposed conservatee, or person alleged to lack legal capacity expresses a preference for a particular attorney to represent them, the court shall allow representation by the preferred attorney, even if the attorney is not on the court's list of a court-appointed attorneys, and the attorney shall provide zealous representation as provided in subdivision (e). However, an attorney who cannot provide zealous advocacy or who has any conflict of interest with respect to the representation of the conservatee, proposed conservatee, or person alleged to lack legal capacity shall be disqualified.

- c. The preferred attorney (non-court appointed counsel) must be properly engaged by the client.
- i. That requires compliance with applicable rules regulating attorney client relationships in the Bus. & Prof. Code and Rules of Professional Conduct.
 - ii. Written retainer agreements?
 - iii. Actual meeting of the minds to create a contract of representation between attorney and client?
 - iv. Legal capacity to enter into a contract?

CAUTION: If the preferred attorney (non-court appointed counsel) cannot provide zealous advocacy or has a conflict of interest, they “shall” be disqualified. Prob. Code §1471(d) (last sentence).

PRACTICE TIP: As long as CAC does not violate any other rule, regulation, or guideline (such as by contravening the wishes, directions, or instructions of the client, and/or disclosing or violating the client's confidences), then CAC may note for Court's attention things that have been properly brought to the Court's attention by others involved in the Court proceeding. Often doing so may be helpful and/or essential to the resolution of the matter pending before the Court.

- d. QUERY: What if the Court asks you as CAC what to do about your appointment now that a preferred attorney (non-court appointed counsel) is allowed to represent the client?
 - i. What does the client want?
 - ii. What if you believe there is a conflict of interest or that the lawyer cannot provide zealous advocacy?
 - 1. We are lawyers and our job is to zealously represent the interests of the client and not to contravene the client's directions or instructions.

PRACTICE TIP: CAC is obligated to timely and properly report to the Court. [SEE DISCUSSIONS BELOW] In so doing, CAC should not violate any direction or instruction received from the client, disclose any client secrets or confidences, or cause irreparable harm to the client's case, so the Court may make a fully informed determination of the issue.

- 2. It is up to the Court to decide disqualification, not you as CAC.
- 3. Similarly, it is up to the Judge supervising the case to decide if you should be discharged, or not.

d. CONDUCT OF CAC:

- i. What does a CAC do once appointed? Prob. Code §1471(e) provides the answer:
 - 1. CAC is an attorney representing a client, whose role is that of a “**zealous, independent advocate representing the wishes of their client.**”

Prob. Code §1471(e)

The role of legal counsel of a conservatee, proposed conservatee, or a person alleged to lack legal capacity is that of a zealous, independent advocate representing the wishes of their client, consistent with the duties set forth in Section 6068 of the Business and Professions Code and the California Rules of Professional Conduct.

- ii. Applicable to all appointments, not just mandatory Prob. Code §1471 appointments.
 - 1. Pertains to “proposed conservatee, conservatee, or person alleged to lack legal capacity.”
- iii. This compels the CAC to act consistent with regulations generally applicable in all attorney-client relationships, including the requirements of Bus. & Prof. Code §6068 and the California Rules of Professional Conduct.
 - 1. ***This should be the same as any other attorney representing a client in a court proceeding.***
 - 2. See Bus. & Prof. Code §6068, in general but also in particular subparagraphs (e), (m), (n).

Bus. & Prof. Code §6068. It is the duty of an attorney to do all of the following:

- (a) To support the Constitution and laws of the United States and of this state.
- (b) To maintain the respect due to the courts of justice and judicial officers.
- (c) To counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense.
- (d) To employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

(e) (1) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.

(2) Notwithstanding paragraph (1), an attorney may, but is not required to, reveal confidential information relating to the representation of a client to the extent that the attorney reasonably believes the disclosure is necessary to prevent a criminal act that the attorney reasonably believes is likely to result in death of, or substantial bodily harm to, an individual.

(f) To advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged.

(g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.

(h) Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.

...

(m) To respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

(n) To provide copies to the client of certain documents under time limits and as prescribed in a rule of professional conduct which the board shall adopt.

3. See Rules of Professional Conduct (Revised 2021) Rules 1.1 (competence), 1.3 (diligence), 1.4 (communication with clients), 1.6 (client confidential information), 1.7 (conflict of interest), 1.8.1 (transactions with clients), and 2.1. (attorney as advisor), etc.

PRACTICE TIP: The Rules of Professional Conduct are designed to assist in disciplinary matters, but serve as a useful, general guide on the actual mechanics of acting as a lawyer representing a client.

- a. See ABA Model Rules, partially adopted in California's Rules of Prof. Conduct.

CAUTION: ABA Model Rule 1.14 ("Client with Diminished Capacity") has not been adopted in California.

e. CONDITIONS OF APPOINTMENT:

- i. **General Orders** - Standing Order of the Probate and Mental Health Supervising Judge (Mar. 15, 2022) **[SEE ATTACHED]** (<https://www.lacourt.org/generalinfo/pace/pdf/2022-SJ-006-00.pdf>) provides for hourly rates, limits, payment, and requests.

ii. LASC Local Rule 4.126

1. Appointments are personal, cannot be delegated or assigned to other attorneys; only attorney appointed may render legal services and appear at hearings (see Prob. Code § 1470 and 1471, and CRC 7.1101(c)(5), 7.1104).

LASC Local Rule 4.126 COURT-APPOINTED COUNSEL APPOINTMENTS

- (a) Appointments are Personal. Court-Appointed Counsel Panel attorney appointments are personal and cannot be delegated or assigned to other attorneys. Only the attorney appointed by the court may render legal services to the client and appear at hearings.
- (b) Appointment Process. Initial appointments are random; however, for good cause judicial officers have discretion to appoint or reappoint specific counsel. Random selection and attorney availability may result in varying numbers of assignments. Counsel on the panel are not guaranteed a minimum number of appointments or minimum amount of fees.
- (c) Counsel's Response to Appointment. Within 48 hours of the court's notification of a proposed appointment, unless a shorter time is ordered by the appointing judicial officer, counsel shall notify the court whether counsel accepts or rejects the appointment. Once counsel accepts an appointment, the court will issue an order making the appointment. If a response is not received within 48 hours of the court's notification of the proposed appointment, counsel is deemed to have waived appointment, and the court will randomly select a new proposed appointment.

2. Appointments are **random** and Court has discretion to appoint; there are **no guarantees** of assignments or fees.
3. Prompt response required (within 48 hours) of notification whether you accept or reject; no response is waiver of appointment.

2. **Ethical Guidelines**

a. **LASC Local Rule 4.125(a):**

i. Probate Code:

1. The mandatory and discretionary appointment statutes (see Prob. Code §§1470 and 1471) do not specify whom the Court shall appoint as CAC.

ii. Rules of Court ("CRC"):

1. CRC Rule 7.1104 provides that Court may create a list or panel of certified attorneys and may establish procedural requirements.
2. CRC Rule 7.1105 tells us the qualifications to be appointed as such a certified attorney.

iii. But only LASC Local Rule 4.125(a) tells us whom our Los Angeles County Superior Court (LASC) may appoint as CAC, and what they are expected to do once appointed.

LASC Local Rule 4.125(a) ETHICAL GUIDELINES AND COMPLAINT PROCESS

(a) Court-Appointed Counsel serve at the pleasure of the court. They are appointed to assist the court in the resolution of the matter to be decided by representing the interests of the client. Court-Appointed Counsel must, if practical, afford the client an opportunity to address the court directly.

1. To "assist in resolution of the matter to be decided by representing the interests of the client." **Why? Answer:**
 - a. Bus. & Prof. Code §6068
 - b. Rules of Prof. Cond. 1.1 – 1.8.1., 2.1, etc.

PRACTICE TIP: Recently revised, this rule says that CAC assists the Court in resolving the matter before it by acting as the client's lawyer (i.e., representing the interests of the client) in the case.

2. CAC must, if practical, “afford client opportunity to address the court directly.” **Why? Answer:**
 - a. See Prob. Code §1825(a) (proposed conservatee shall be produced at the hearing on the appointment of a conservator).
 - b. See Prob. Code §1828(a)(6) (proposed conservatees have the right to oppose the petition, be represented by counsel, and to have court appointed counsel)
 - c. See Prob. Code §1828(b) (the court shall consult the proposed conservatee to determine the proposed conservatee’s opinion before the appointment of a conservator).

PRACTICE TIP: The phrase “afford opportunity” mandates that the CAC should assist in making suitable arrangements for the client to appear before the Court. See Prob. Code §1826(a)(9), 1850 and 1851.1. This would be no different than any attorney-client relationship where the client’s presence at a court hearing is needed or desired.

b. LASC Local Rule 4.125(b):

- i. CAC must represent the client:
 1. In accordance with applicable laws:
 - a. Bus. & Prof. Code §6068
 - b. Rules of Prof. Cond. 1.1 – 1.8.1., 2.1, etc.

LASC Local Rule 4.125(b)

Court-Appointed Counsel must represent the client in accordance with applicable laws and with due diligence, including appearing at scheduled proceedings, timely communicating with the client regarding developments in the case, preparing and timely submitting reports that are complete, thorough and clear, and discharging the representation in compliance with ethical requirements and cost effectiveness.

- ii. What does this entail? **Four (4) aspects:**
 1. **FIRST** -- Duly, timely, and properly appearing at scheduled proceedings;

2. **SECOND** -- Timely communicating with the client regarding developments in the case;
 - a. See Bus. & Prof. Code §§6068(m), (n);
3. **THIRD** -- Preparing and timely submitting reports that are complete, thorough, and clear.
 - a. Mandatory... "must file" a written report.
 - b. Generally referred to as "CAC Reports."
 - c. See Local Rule 4.127(a)); and

LASC Local Rule 4.127

(a) Written Report. Court-Appointed Counsel must file a written report including verified statements that counsel:

- (1) is an active member of the State Bar of California and has no pending disciplinary actions, and that no disciplinary actions have been filed against counsel in the preceding 12 months;
- (2) has professional liability insurance coverage in effect with policy limits consistent with the value of the matter being handled; and
- (3) has not represented any party to the proceeding except as stated in the report. The statement must include the name of the party represented and a brief explanation of the representation. Court-Appointed Counsel must include cases where counsel has represented a private professional conservator in the proceeding

4. **FOURTH** -- Discharging the representation in compliance with ethical requirements and cost effectiveness.
 - a. Ethical Requirements (see Bus. & Prof. Code §6068 and Rules of Prof. Cond. 1.1 – 1.8.1., 2.1, etc.)
 - b. Cost Effectiveness:
 - i. Some considerations:
 1. Completing the work in connection with the petition;
 2. Are issues beyond the petition "legal" issues requiring counsel or may these be handled by the conservator, relatives, or public or private agencies?

3. Consider benefit to the conservatee related to expense and results achieved (see, e.g., CRC Rule 7.702(2), (3))
4. Consider allocations on initial appointments (12 hours) or re-appointments (10) (LASC Local Rule 4.127(b)(1))

c. LASC Local Rules 4.125(c) & (d): There is a formalized process for receiving and handling Complaints about CAC.

LASC Local Rule 4.125(c)

Complaints regarding Court-Appointed Counsel must be in writing, be submitted timely, cite specific facts to support allegations of misconduct or bias, and include the name and mailing address of the complaining party or the party's representative.

LASC Local Rule 4.125(d)

Complaints regarding Court-Appointed Counsel must be submitted to the judicial officer assigned to the case. Complaints regarding Court-Appointed Counsel's service or performance on the panel shall be submitted to the Supervising Judge of the Probate and Mental Health division.

d. LASC Local Rule 4.125(e): Appointment as CAC is a "privilege," and CAC may be removed with or without cause.

LASC Local Rule 4.125(e)

Appointment to the Court-Appointed Counsel panel is a privilege. Counsel may be removed with or without cause.

- i. See also Prob. Code §§1470 and 1471
- ii. See also CRC Rules 7.1101(c)(5) & 7.1104

3. Compensation

- a. Generally, the issue comes down to whether or not CAC should be paid by the client, the client's conservatorship estate, by the County (PACE, etc.), or some other source. There is guidance.

CAUTION: Lawyers are in a fiduciary relationship with their client. So CAC must represent the interests of their client and put those interests ahead of their own personal interests. Hence, CAC has an ethical duty to advise the Court if the client is eligible for County payment of CAC fees approved by Court even if that results in lower receipts or delayed payment.

b. Sources of Payment:

i. For Prob. Code §1470 discretionary appointments - Prob. Code §1470(c)(1) – payment is from the estate of the person. This does not always require that a conservatorship estate be created, rather it means an adult must pay. For example, where a conservator is not appointed. See Prob. Code §§1472(c)(2), (4).

1. Prob. Code §1470(c)(3) – the Judicial Council has adopted guidelines (SEE BELOW).
2. There appears to be no available County pay option for discretionary appointments. See Judicial Council Guidelines, section 7.

ii. For Prob. Code §1471 mandatory appointments – payment of a “reasonable sum” depends upon the “ability to pay.”

Prob. Code §1472

- (a) If a person is furnished legal counsel under Section 1471:
- (1) The court shall, upon conclusion of the matter, fix a reasonable sum for compensation and expenses of counsel and shall make a determination of the person's ability to pay all or a portion of that sum. The sum may, in the discretion of the court, include compensation for services rendered, and expenses incurred, before the date of the order appointing counsel.
 - (2) If the court determines that the person has the ability to pay all or a portion of the sum, the court shall order the conservator of the estate or, if none, the person, to pay in any installments and in any manner the court determines to be reasonable and compatible with the person's financial ability.
 - (3) In a proceeding under Chapter 3 (commencing with Section 3100) of Part 6 for court authorization of a proposed transaction involving community property, the court may order payment out of the proceeds of the transaction.
 - (4) If a conservator is not appointed for the person furnished legal counsel, the order for payment may be enforced in the same manner as a money judgment.
- (b) If the court determines that a person furnished private counsel under Section 1471 lacks the ability to pay all or a portion of the sum determined under paragraph (1) of subdivision (a), the county shall pay the sum to the private counsel to the extent the court determines the person is unable to pay.
- (c) The payment ordered by the court under subdivision (a) shall be made to the county if the public defender has been appointed or if private counsel has been appointed to perform the duties of the public defender and the county has compensated that counsel. In the case of other court-appointed counsel, the payment shall be made to that counsel..

1. If a person was “**furnished counsel**” pursuant to a **mandatory appointment under Prob. Code §1471**, then Court must make a determination of person’s ability to pay all or a portion of the amount fixed by the Court.
 - a. If Court determines person lacks ability to pay all or a portion, then the county shall pay to the extent the Court determines the person is unable to pay.
 - b. If Court determines person has ability to pay all or some, Court shall order conservatorship estate, or if none, the person to pay in any manner court determines reasonable and compatible with person’s financial ability.

LASC Local Rule 4.127(b)(3)

If a person who has Court-Appointed Counsel represents an inability to pay, the court may order the fees to be paid by the estate, a party, or the County of Los Angeles where authorized by statute.

PRACTICE TIP: If a conservator is not appointed, then the order to pay CAC compensation is enforceable as a money judgment. See Prob. Code §1472(a)(4).

2. Judicial Council guidance:
 - a. See CRC Appendix E, Guidelines for Determining Financial Eligibility for County for the Payment of the Cost of Counsel Appointed by the Court in Proceedings Under the Guardianship-Conservatorship Law, Section 4, at https://www.courts.ca.gov/documents/appendix_e.pdf **[SEE ATTACHED]**
 - i. These guidelines assist in determining financial eligibility for county payment under Prob. Code §§ 1470-1472.

- ii. Persons responsible for payment where able to pay are estate of conservatee or proposed conservatee for Prob. Code § 1470-1472, and the conservatee or proposed conservatee where he or she has no estate for Prob. Code § 1471-1472.
- iii. Presumed eligibility for county payment where conservatee or proposed conservatee is eligible for SSI, SSP, Medi-Cal, General Relief, CalFresh/SNAP, IHSS or other enumerated programs; where person's income is 125% or less of current federal poverty guidelines (<https://www.federalregister.gov/documents/2022/01/21/2022-01166/annual-update-of-the-hhs-poverty-guidelines>); or where Court determines that person cannot pay without using funds normally used to pay for common necessities of life for person and their family (former CCP § 706.051 before amended Jan. 1, 2012 (medical bills, food, shelter; food, heat, shelter, etc.; essentials commonly required by all persons for the sustenance of life, whatever their employment status and includes medical care; as used in fee waiver requests)).
- iv. Court can order fees paid in installments to allow money to be used to pay necessities of life for person and their family.

- v. County pays only what person cannot pay.
- vi. If person is not presumed eligible for County pay (not eligible for enumerated programs, income above 125% of poverty line, and can pay without using funds used for common necessities of life), can Court still find they are eligible? These are guidelines so probably "yes."
 - 1. Court still has to determine person's financial ability to pay
- 3. Other basis for compensation:
 - a. Agreement to accept terms of payment.
 - i. See Item 10 in Local Form PRO 058 Annual Compliance Certification for Court Appointed Counsel Panel.
 - b. Exceptions to panel rate for larger estates and where special expertise is required.
 - i. See Local Rule 4.127(b)(2).

4. Future Representation

- a. See item 9 in Local Form PRO 058 Annual Compliance Certification for Court Appointed Counsel Panel:
 - i. CAC must acknowledge and agree to the following statement:
 - 1. "I understand that I may not represent any other party in cases in which I have been appointed as counsel, or in cases that are related to cases in which I was appointed as counsel (for example, representation of an executor after the death of a conservatee whom I was appointed to represent)."

- b. Ethical issues regarding your appointment as CAC after serving as Guardian ad litem (GAL) for the same person.
 - i. Is there a conflict between your role as GAL and CAC?
 - 1. Consider Rules of Prof. Cond. Rule 1.7(b)
 - 2. Can informed written consent ever be obtained?
 - ii. A GAL is an officer of the court appointed to represent a ward in litigation, and to protect and promote the ward's interests.
 - iii. Is the ward opposed to the actions of the GAL?
 - 1. If so, the GAL's interest may conflict with the client's interest.
 - 2. It may not matter whether you continue to serve as GAL or have been discharged as GAL.
 - iv. The GAL is not necessarily an advocate for the ward's wishes. There is no attorney-client relationship between a GAL and their ward.
 - v. By contrast, CAC is an attorney appointed by the court to represent a proposed Conservatee. See Prob. Code §1471(a), (b), (e); Bus. & Profs. Code §6068.
-
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By: A. Esparza, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

IN RE PROBATE DIVISION'S COURT- APPOINTED COUNSEL PANEL [PROBATE CODE SECTIONS 1470 AND 1471])))))	STANDING ORDER OF THE PROBATE AND MENTAL HEALTH SUPERVISING JUDGE
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A Court-wide policy has been established to ensure that available resources are allocated in a manner that promotes access to justice for all members of the public, provides a forum for the fair and expeditious resolution of disputes, maximizes the use of available resources, and carries out the direction of the Legislature that courts adopt cost-effective plans for the appointment of publicly compensated counsel. [See Cal. Rules of Court, Rule 7.1101 and Pen. Code sec. 987.2] Pursuant to the responsibility of the Presiding Judge through California Rule of Court, Rule 7.1101 to establish Court-wide policy in this regard, the authority for establishing this Court-wide policy has been delegated to the Supervising Judge of the Probate Division pursuant to California Rule of Court, Rule 7.1101.

The Probate Code requires the appointment of counsel for a proposed conservatee under certain circumstances. [Prob. Code sec. 1471.] In other cases, the Court may appoint counsel where the proposed conservatee is not otherwise represented by counsel and the appointment of counsel would be helpful to the resolution of the matter or is necessary to protect the proposed conservatee's interests. [Prob. Code sec. 1470(a).]

1 In guardianship proceedings, the Probate Code provides that the Court may appoint counsel for
2 a proposed ward if the proposed ward is not otherwise represented by counsel and the appointment of
3 counsel would be helpful to the resolution of the matter or is necessary to protect the proposed ward's
4 interests. [Prob. Code sec. 1470(a).]

5 As a condition of accepting or continuing any Court-Appointed Counsel Panel appointment to
6 represent a proposed conservatee, conservatee, proposed ward, ward or other individual, counsel must
7 agree to the policies set forth in this order as follows:

- 8 1. Effective April 1, 2022, the hourly rate for cases in which the Court determines that the
9 adult client or his/her estate, or a minor client's parent(s) or the minor's estate has no
10 ability to pay, shall not exceed \$150. The \$150 per hour rate is applicable for work
11 performed on or after April 1, 2022.
- 12 2. The hourly rate for cases in which the Court determines that the adult client or his/her
13 estate, or minor client's parent(s) or the minor's estate has sufficient assets to pay, shall not
14 exceed \$250, except in cases involving unusual problems requiring extraordinary expertise.
- 15 3. Except as otherwise authorized by the Court, services for Court-appointed attorneys related
16 to a petition for appointment of a guardianship shall not exceed 12 hours.
- 17 4. Except as otherwise authorized by the Court, services for Court-appointed attorneys related
18 to a petition for appointment of a limited conservatorship shall not exceed 12 hours. Except
19 as otherwise authorized by the Court, services for Court-appointed attorneys related to a
20 petition for appointment of a general conservatorship shall not exceed 12 hours for
21 appointments and 10 hours for reappointments.
- 22 5. On cases in which the Court has determined that the adult client or his/her estate, or a
23 minor client's parent(s) or the minor's estate has no ability to pay his/her counsel and the
24 County of Los Angeles is ordered to pay for such services, appointed attorneys shall be
25 compensated through the Professional Appointee Court Expense, herein referred to as
26 PACE, program.
 - 27 a. If payment is requested by any counsel who has received compensation for Probate
28 Code 1470 and 1471 appointments (including reappointments) in an amount of

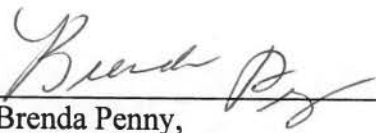
1 more than \$100,000 for any fiscal year (July 1 to June 30), PACE will notify the
2 Supervising Judge of the Probate and Mental Health Division.

- 3 b. If payment is requested by any counsel who has received combined compensation
4 for (1) Probate Code 1470 and 1471 appointments (including reappointments) and
5 (2) Family Code section 3153(b) (minor's counsel) in an amount of more than
6 \$150,000 for any fiscal year (July 1 to June 30), PACE will notify the Supervising
7 Judge of the Probate and Mental Health Division.
- 8 c. Requests for additional compensation by Court-appointed counsel shall be
9 submitted in writing and must include the total amount previously approved for the
10 attorney on the case, as well as establish good cause for the additional
11 compensation. The Court may award additional compensation upon competent
12 evidence of good cause. Requests for additional fees and costs shall be made on the
13 Request by Court Appointed Counsel or Expert for Payment of or Authorization for
14 Additional Time or Expenses form.
- 15 d. It is the responsibility of Court-appointed counsel to fully apprise the Court at every
16 hearing of the status of all fees incurred. Failure to do so may impact the amount of
17 the fee awarded.
- 18

19 This order supersedes the existing general order dated June 10, 2019.

20 GOOD CAUSE APPEARING, IT IS SO ORDERED.

21
22 DATED: 3/15/2022

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Hon. Brenda Penny,
24 Supervising Judge of Probate and Mental Health
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Appendix E

Guidelines for Determining Financial Eligibility for County Payment of the Cost of Counsel Appointed by the Court in Proceedings Under the Guardianship-Conservatorship Law

1. Purpose

These guidelines are adopted to implement Probate Code section 1470(c)(3), which provides that the Judicial Council shall adopt guidelines to assist in determining financial eligibility for county payment of all or part of the reasonable sum fixed by the court for compensation and expenses of counsel appointed by the court under chapter 4 of part 1 of division 4 of the Probate Code.

2. Persons responsible for payment of the cost of appointed counsel

Except to the extent that they are determined to be unable to pay for all or any portion of the cost of appointed counsel under paragraph 5 of these guidelines, the following persons or estates of persons (referred to collectively as the “responsible person”) are responsible for the payment of that cost:

- A. The estate of the ward or proposed ward in a guardianship proceeding under section 1470;
- B. The parent or parents of the ward or proposed ward in a guardianship proceeding under section 1470;
- C. The estate of a conservatee or proposed conservatee in a conservatorship proceeding under sections 1470–1472;
- D. The conservatee or proposed conservatee, if he or she has no estate, in a conservatorship proceeding under sections 1471–1472;
- E. The person alleged to lack legal capacity in a proceeding to authorize a particular transaction in community property under sections 1471–1472, to the extent the court does not order the cost paid from the proceeds of the transaction under section 1472(a)(3); and
- F. The health care patient in a proceeding to determine his or her capacity to make a health care decision under sections 1471–1472.

3. Cost of appointed counsel

1 The cost of appointed counsel is the reasonable sum fixed by the court after the
2 performance of legal services under Probate Code section 1470 or section 1472 for
3 the compensation and expenses of appointed counsel.
4

5 **4. Presumed eligibility for county payment**
6

7 Except as provided in paragraph 7, the person responsible for payment of the cost
8 of appointed counsel is presumed to be eligible for payment by the county of that
9 cost if the person satisfies one or more of the following three conditions:
10

11 A. The responsible person is eligible for:
12

- 13 (1) Supplemental Security Income (SSI) and State Supplementary
14 Payment (SSP);
15
- 16 (2) Medi-Cal;
17
- 18 (3) General Assistance or General Relief (GA/GR) Program (county
19 general relief);
20
- 21 (4) Cash Assistance Program for [aged, blind, and disabled legal]
22 Immigrants (CAPI);
23
- 24 (5) CalWORKs (California Work Opportunity and Responsibility to Kids)
25 or Tribal (Native American) TANF (Temporary Assistance for Needy
26 Families) grant program;
27
- 28 (6) CalFresh (Supplemental Nutrition Assistance Program (SNAP)) or
29 California Food Assistance Program (CFAP), a California program for
30 immigrants not eligible for federal SNAP; or
31
- 32 (7) In-Home Supportive Services (IHSS);
33

34 B. The responsible person's income is 125 percent or less of current federal
35 poverty guidelines, updated periodically in the Federal Register by the United
36 States Department of Health and Human Services; or
37

38 C. The responsible person, as individually determined by the court, cannot pay
39 the cost of appointed counsel without using funds that would be normally
40 used to pay for the common necessities of life for the responsible person and
41 his or her family.
42

1 **5. Determination of responsible person’s obligation for the cost of appointed**
2 **counsel**

3
4 If the court finds that the responsible person, including a responsible person
5 described in paragraph 4, can pay all or a portion of the cost of appointed counsel,
6 can pay those costs in installments, or can pay those costs under some other
7 equitable arrangement without using money that normally would pay for the
8 common necessities of life for the responsible person and the responsible person’s
9 family, the court may order the responsible person to pay appointed counsel
10 directly, reimburse the county for the costs of appointed counsel paid by the
11 county, or both, in part or on such other terms as the court determines are fair and
12 reasonable under the circumstances.

13
14 **6. Apportionment**

15
16 If the responsible person is the estate of a ward or proposed ward and one or both
17 of his or her parents, the court may allocate the amount determined to be payable
18 by the responsible person under paragraph 5 among them in any proportions the
19 court deems just.

20
21 **7. Private appointed counsel for conservatee under section 1470**

22
23 A conservatee or proposed conservatee for whom private counsel is appointed
24 under Probate Code section 1470 is ineligible for payment by the county of any
25 portion of the cost of appointed counsel.

26
27 **8. Amount payable by the county**

28
29 Except as provided in paragraph 7, the amount payable by the county for the cost of
30 appointed counsel is all or any part of the cost that the court determines that the
31 responsible person cannot pay under paragraph 5.

32
33 *Appendix E adopted effective January 1, 2013.*

34
35 **Advisory Committee Comment**

36
37 The guidelines placed in Appendix E to the California Rules of Court are not rules of court. They
38 are based in part on the conditions for granting an initial court fee waiver under Government
39 Code section 68632(a)–(c). For the purposes of these guidelines as well as of that Government
40 Code section, the term “common necessities of life” has the same meaning it had in Code of
41 Civil Procedure section 706.051(c)(1) before the amendment of that section effective on January
42 1, 2012. (Assem. Bill 1388; Stats. 2011, ch. 694, § 1.)

1 The 2012 amendment of section 706.051(c)(1) completely eliminated “common necessities of
2 life” from that code section. The deleted phrase referred to an exception to the exemption
3 provided in the section from an earnings withholding order for amounts the debtor can prove are
4 necessary to support himself or herself and his or her family, often referred to as the support
5 exemption. In other words, under former section 706.051(c)(1), the support exemption of section
6 706.051(b) would not apply to shield the debtor from an earnings withholding order to collect a
7 debt incurred to purchase the “common necessities of life.”
8

9 The following appellate cases discussed the meaning of “common necessities of life” as that
10 phrase was used in section 706.051(c)(1) and predecessor code sections that used the phrase for
11 the same purpose:
12

- 13 • A debt for hospital services to defendant or his family was based on the common
14 necessities of life. (*J. J. MacIntyre Co. v. Duren* (1981) 118 Cal.App.3d Supp. 16.)
15
- 16 • The performance of legal services and the advancement of costs of litigation giving rise
17 to award to an attorney in marriage dissolution action qualified as “common necessities
18 of life” for the benefit of the debtor’s indigent wife, thereby permitting the attorney to
19 enforce the award by writ of execution on the husband’s earnings against his claim of the
20 support exemption. (*In re Marriage of Pallesi* (1977) 73 Cal.App.3d 424.)
21
- 22 • “Common necessities of life,” in former section 690.11 (repealed) exempting debts
23 incurred for common necessities of life from a statute protecting all of a judgment
24 debtor’s earnings from execution or attachment if earnings were necessary for the support
25 of the debtor’s family, did not refer to “necessaries” in the broad sense, but meant things
26 that are ordinarily required for everyone’s sustenance. (*Ratzlaff v. Portillo* (1971) 14
27 Cal.App.3d 1013.)
28
- 29 • Attorney’s fees former wife incurred in obtaining divorce were not common “necessaries
30 of life” within the meaning of former section 690.11 (repealed). (*Lentfoehr v. Lentfoehr*
31 (1955) 134 Cal.App.2d Supp. 905.)
32
- 33 • “Common necessities of life,” as used in former section 690.11 (repealed), exempting all
34 of the earnings of a debtor if necessary for the use or support of debtor’s family residing
35 within the state, except as against the collection of debts incurred by debtor, his wife, or
36 family for common necessities of life—meant those things that are commonly required
37 by persons for their sustenance regardless of their employment or status. (*Los Angeles*
38 *Finance Co. v. Flores* (1952) 110 Cal.App.2d Supp. 850.)
39
- 40 • In proceedings supplemental to execution, the debtor was required to pay one-half of a
41 check for \$47.50, which was in her possession, and which had been received as salary
42 from the Works Progress Administration, in partial satisfaction of a judgment based on a
43 necessary of life, although money may have been needed by debtor for the support of

1 herself and her family. (*Medical Finance Association v. Short* (1939)
2 36 Cal.App.2d Supp. 745.)

**Determining Financial Eligibility for County Payment of Cost of Appointed Counsel
(for mandatory appointment of counsel under PC 1471)**

1. Fix reasonable sum for compensation and expenses of CAC (PC 1472(a))
2. Determine person's ability to pay all or portion of that sum (PC 1470(c)(3), 1472(a), Guidelines 4).

A. Is person eligible for (Guidelines 4A):

Supplemental Security Income (SSI) and State Supplementary Payment (SPP)	General Assistance or General Relief (GA/GR) Program (county general relief)
CalWORKs (California Work Opportunity and Responsibility to Kids) or Tribal (Native American) TANF (Temporary Assistance for Needy Families) grant program	CalFresh (Supplemental Nutrition Assistance Program (SNAP)) or California Food Assistance Program (CFAP), a California program for immigrants not eligible for federal SNAP
Medi-Cal	In-Home Supportive Services (IHSS)
Cash Assistance Program for [aged, blind, and disabled] legal Immigrants (CAPI)	

YES → ELIGIBLE FOR PAYMENT BY COUNTY

NO ↓

B. Is person's income 125% or less of current federal poverty guidelines (Guide. 4B):

Persons in family/household	Poverty guideline 2022	Persons in family/household	Poverty guideline 2022
1	\$13,590 x 125%=16,987.50	5	32,470 x 125% =40,587.50
2	18,310 x 125% = 22,887.50	6	37,190 x 125% =46,487.50
3	23,030 x 125% = 28,787.50	7	41,910 x 125% =52,387.50
4	27,750 x 125% = 34,687.50	8	46,630 x 125% =58,287.50

For more than 8 persons, add \$4,720 for each additional person, multiplied by 125%.

YES → ELIGIBLE FOR PAYMENT BY COUNTY

NO ↓

C. Can person pay all or a portion of that sum **without using funds that would be normally used to pay for the **common necessities of life for person and their family (medical bills, food, shelter, heat, essentials commonly required for sustenance of life)** (Guidelines 4C)**

NO → ELIGIBLE FOR PAYMENT BY COUNTY

YES ↓

3. Is there a conservator of the estate?

YES → Order conservator to pay: (PC 1472(a)(2), Guidelines 2C)

NO ↓ Order person to pay: (PC 1472(a)(2), Guidelines 2D)

to CAC that amount in any installments and in **any manner that is reasonable and compatible with the person's financial ability** (PC 1472(a)(2), (c)), under some other **equitable arrangement**, by paying counsel directly or reimbursing cost of appointed counsel paid by County, or both, in part or on such **other terms as are fair and reasonable under the circumstances** (Guidelines 5).

4. If unable to pay all or portion, County will pay the amount person is unable to pay (PC 1472(b), Guidelines 8)